

MARY ANN SMITH  
Deputy Commissioner  
SEAN ROONEY  
Assistant Chief Counsel  
BLAINE A. NOBLETT (State Bar No. 235612)  
Senior Counsel  
Department of Business Oversight  
320 West 4th Street, Suite 750  
Los Angeles, California 90013-2344  
Telephone: (213) 576-1396  
Facsimile: (213) 576-7181

Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

In the Matter of:	)	CRMLA LICENSE NO.: 413-0364
	)	
THE COMMISSIONER OF BUSINESS	)	ACCUSATION
OVERSIGHT,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
DHI MORTGAGE COMPANY, LTD., L.P.,	)	
	)	
Respondent.	)	
	)	
	)	

Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), is informed and believes, and based upon such information and belief, alleges and charges Respondent DHI Mortgage Company Ltd., L.P. (DHI), as follows:

**I.**

**Jurisdiction and Venue**

1. The Commissioner is authorized to administer and enforce the provisions of the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.) and the rules

1 issued under title 10 of the California Code of Regulations (CCR) that regulate the business and  
2 activities of residential mortgage lenders and mortgage loan servicers.

3 2. The Commissioner brings this action under the provisions of Financial Code section  
4 50513 and the rules and regulations promulgated thereunder.

## 5 II.

### 6 **Statement of Facts**

7 3. DHI is a residential mortgage lender licensed by the Commissioner under the  
8 CRMLA. DHI has its principal place of business located at 10700 Pecan Park Boulevard, Suite 450,  
9 Austin, Texas. At all relevant times herein, DHI employed mortgage loan originators and operated  
10 branch locations throughout California.

11 4. The Commissioner commenced a regulatory examination of the licensee on or about  
12 June 5, 2017.

13 5. The examination disclosed, in five out of the 21 funded loan files Department staff  
14 reviewed, DHI overcharged borrowers' per diem interest in excess of one day prior to the  
15 disbursement of loan proceeds in violation of Financial Code section 50204, subdivision (o) (an  
16 exception rate of 24 percent). During DHI's prior examination that commenced on or about May 13,  
17 2013, the Commissioner cited the company for per-diem-interest overcharges in one out of 20 loan  
18 files reviewed during the examination (a 5-percent exception rate).

19 6. The following is a summary of the five loan files in which DHI overcharged  
20 borrowers' per diem interest:

21 a. Loan Number 1091257

22 Per the closing disclosure document, DHI charged the borrower 23 days interest (from April 8  
23 to May 1, 2016) at \$48.09 interest per day for a total of \$1,106.07. The first payment on the note was  
24 due by June 1, 2016; therefore, interest began to accrue on the loan beginning May 1. But per the  
25 disbursement ledger, the majority of loan proceeds actually disbursed on April 12. The CRMLA  
26 permitted DHI to charge the borrower 19 days of interest from April 12 to May 1, plus one additional  
27 day of interest per Civil Code section 2948.5, subdivision (a), or \$961.84. DHI overcharged the  
28 borrower three days' interest or \$144.23.

## 1                   b.       Loan Number 1122356

2           Per the closing disclosure document, DHI charged the borrower one day of interest (from  
3   September 30 to October 1, 2016) at \$75.34 interest per day. The first payment on the note was due  
4   November 1, 2016; therefore, interest began to accrue on the loan beginning October 1. But  
5   according to the disbursement ledger, the majority of loan proceeds actually disbursed on October 6,  
6   and DHI should have provided the borrower four days interest credit. DHI should have also credited  
7   the borrower the one-day per-diem-interest charge on September 30, or \$376.71. DHI overcharged  
8   the borrower five days of interest or \$376.71.

## 9                   c.       Loan Number 990839

10          Per the final settlement statement, DHI charged the borrower five days interest (from  
11   September 26 to October 1, 2014) at \$40.27 interest per day for a total of \$201.35. The first payment  
12   on the note was due by November 1, 2014; therefore, interest began to accrue on the loan beginning  
13   October 1. But according to the disbursement ledger, the majority of loan proceeds disbursed on  
14   September 30. The CRMLA permitted DHI to charge the borrower one day of per diem interest, plus  
15   one additional day of interest per Civil Code section 2948.5, subdivision (a), or \$80.53. DHI  
16   overcharged the borrower three days' interest or \$120.82.

## 17                  d.       Loan Number 984839

18          Per the final settlement statement, DHI charged the borrower 15 days interest (from October  
19   17 to November 1, 2014) at \$52.20 interest per day for a total of \$783.00. The first payment on the  
20   note was due by December 1, 2014; therefore, interest began to accrue on the loan beginning  
21   November 1. The majority of loan proceeds disbursed on October 17. The CRMLA permitted DHI to  
22   charge the borrower one additional day of interest prior to the date the borrower's proceeds disbursed;  
23   however, DHI did not collect the additional day of per diem interest. But, per the final settlement  
24   statement, the loan had an interest rate of 3.375 percent. DHI should have calculated the daily per-  
25   diem-interest rate based on the borrower's 3.375-percent interest rate. Instead, DHI charged the  
26   borrower additional interest based on a higher 4.125-percent interest rate. A DHI representative, by e-  
27   mail, informed the examiner that the company had made a calculation error in computing the  
28   borrower's daily per-diem-interest rate. Based on the lower interest rate, DHI should have charged the

1 borrower \$683.36 for 16 days of per diem interest from October 16 to November 1. DHI overcharged  
2 the borrower \$99.64.

3 e. Loan Number 1139387

4 Per the closing disclosure document, DHI charged the borrower nine days interest (from  
5 December 23, 2016 to January 1, 2017) at \$56.70 interest per day. The borrower's first payment on  
6 the note was due February 1, 2017; therefore, interest began to accrue on the loan beginning January  
7 1, 2017. But according to the disbursement ledger, the majority of loan proceeds actually disbursed  
8 on December 27. The CRMLA permitted DHI to charge the borrower five days of interest from  
9 December 27 to January 1, plus one additional day of interest per Civil Code section 2948.5,  
10 subdivision (a), or \$340.21. DHI overcharged the borrower \$170.09 for three days per diem interest.

### 11 III.

#### 12 Applicable Statutes

13 7. Civil Code section 2948.5, provides:

14 (a) A borrower shall not be required to pay interest on a principal  
15 obligation under a promissory note secured by a mortgage or deed of  
16 trust on real property improved with between one to four residential  
17 dwelling units for any period that meets any of the following  
18 requirements:

19 (1) Is more than one day prior to the date that the loan proceeds are  
20 disbursed from escrow.

21 (2) In the event of no escrow, if a request for recording is made in  
22 connection with the disbursement, is more than one day prior to the  
23 date the loan proceeds are disbursed to the borrower, to a third party on  
24 behalf of the borrower, or to the lender to satisfy an existing obligation  
25 of the borrower.

26 (3) In all other circumstances where there is no escrow and no request  
27 for recording, is prior to the date funds are disbursed to the borrower, to  
28 a third party on behalf of the borrower, or to the lender to satisfy an  
existing obligation of the borrower.

(b) Interest may commence to accrue on the business day immediately  
preceding the day of disbursement, for obligations described in  
paragraphs (1) and (2) of subdivision (a) if both of the following occur:

(1) The borrower affirmatively requests, and the lender agrees, that the disbursement will occur on Monday, or a day immediately following a bank holiday.

(2) The following information is disclosed to the borrower in writing:

(A) the amount of additional per diem interest charged to facilitate disbursement on Monday or the day following a holiday, as the case may be, and (B) that it may be possible to avoid the additional per diem interest charge by disbursing the loan proceeds on a day immediately following a business day. This disclosure shall be provided to the borrower and acknowledged by the borrower by signing a copy of the disclosure document prior to placing funds in escrow.

(c) This section does not apply to a loan that is subject to subdivision (c) of Section 10242 of the Business and Professions Code.

8. Financial Code section 50204, provides in pertinent part, "A licensee may not do any of the following . . . (o) Commit an act in violation of Section 2948.5 of the Civil Code[.]"

9. Financial Code section 50327 provides:

(a) The commissioner may, after notice and a reasonable opportunity to be heard, deny, decline to renew, suspend, or revoke any license if the commissioner finds that:

(1) The licensee has violated any provision of this division or any rule or order of the commissioner thereunder.

(2) Any fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

(b) The power of investigation and examination by the commissioner is not terminated by the denial, nonrenewal, surrender, suspension, or revocation of any license issued by him or her.

10. Financial Code section 50513 provides in pertinent part:

(a) The commissioner may do one or more of the following:

. . . .

(4) Impose fines on a mortgage loan originator or any residential

mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

#### IV.

#### Prayer

The Commissioner finds that, by reason of the foregoing, DHI violated Financial Code section 50204, subdivision (o), and grounds exist to (i) suspend DHI's residential mortgage lender license under the CRMLA, and (ii) assess penalties against DHI under Financial Code section 50513, subdivision (b).

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1 WHEREFORE, IT IS PRAYED that:

2 Under Financial Code section 50327, the Commissioner suspend DHI's residential mortgage  
3 lender license for a period of up to 12 months and, under Financial Code section 50513, subdivision  
4 (b), levy penalties against DHI for at least five violations of Financial Code section 50204,  
5 subdivision (o), overcharging per diem interest, according to proof, but in an amount of at least  
6 \$7,000.00 per violation.

7 Dated: January 9, 2019  
8 Los Angeles, California

JAN LYNN OWEN  
Commissioner of Business Oversight

9  
10 By \_\_\_\_\_  
11 Blaine A. Noblett  
12 Senior Counsel  
13 Enforcement Division  
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